

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3726 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MANUBHAI KHIMJIBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

Mr. H.R.Prajapati for M/S THAKKAR ASSOC. for Petitioner
Mr.Nigam Shukla,learned Addl.P.P.for the
respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/10/96

ORAL JUDGMENT

1. Through this Special Civil Application the petitioner-detenu has challenged the detention order dated 15-4-96 passed by the District Magistrate, Amreli under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on the same day i.e. on 15-4-96 and since then the petitioner is

detained in Sabarmati Central Jail, Ahmedabad.

2. The grounds, which were enclosed with the detention order, show that in all 8 criminal cases under the Bombay Prohibition Act were pending against the petitioner. All the 8 cases are from Police Station, Kodinar. 6 cases out of these 8 cases are pending in the Court and 2 cases were pending police investigation at the time when the detention order was passed. All these cases under the Bombay Prohibition Act relate to the period 17-2-94 to December 1995 and the quantity of country liquor involved in these cases range from 15 liters to 750 liters. After mentioning the pendency of the criminal cases against the petitioner, as above, the detaining authority has observed that the petitioner was threatening witnesses in these criminal cases and thus defeating the process of law. The petitioner had beaten a Panch witness and had threatened him that he should not depose against the petitioner in the Court, otherwise he and his relatives will not be allowed to live in the village. It has been further mentioned in the detention order that in case the names and addresses of witnesses are disclosed their person and property will be in danger. The detaining authority has mentioned that in the village Chhara and in the nearby area petitioner was engaged in manufacturing unauthorised liquor and had spread terror and fear psychosis in the village and his anti social activities were thus disturbing the public order. The detaining authority then referred to the statements made by 4 witnesses on 25-1-96 before the Police Sub Inspector, Amreli, who have stated that the petitioner was engaged in the sale of unauthorised liquor, he himself used to go to sell the liquor, sisters and daughters were not able to move out of their houses and they were not able to move freely in the village. It has been further mentioned that the country liquor, which had been sold out by the petitioner, had been consumed by the guest of the witness and his guest suffered loose motion and vomiting and when the grievance was raised, he had abused the witness and had beaten him. The allegations with regard to the anti social activities of the petitioner, as stated by the other witnesses, have also been considered coupled with the allegations of beating and threats having been given to the witnesses and it has also been stated that out of the fear psychosis the witnesses were not willing to make the report against the petitioner, who was a bootlegger, was doing dadagiri, was manufacturing the country liquor and was selling the same publicly leading to the disturbance of the public order. For all these reasons, the detaining authority was satisfied that the petitioner was required to be

detained. Against this detention order dated 15-4-96 the petitioner's father made a representation on 21-4-96 to the Chief Minister of the State wherein he also made a demand about the supply of certain documents, including the copies of the Panchanama of the cases mentioned in the ground of detention as also the names and addresses of the witnesses, date, time and place of the incident narrated by the witnesses in their respective statements. The arrest memos of all the cases were also demanded and a demand was also made for the supply of the copy of the F.S.L. of all the offences. After making the representation dated 21-4-96, as aforesaid, the petitioner preferred this Special Civil Application on 16-5-96 and on 17-5-96 this Court issued Rule making it returnable for 24-7-96. The respondents have not cared to file any reply nor the affidavit of the detaining authority has been filed. However, Mr. Shukla appearing on behalf of the respondents has chosen to contest this petition orally and has submitted that there was sufficient material before the detaining authority to be satisfied that the petitioner was required to be detained and after due application of mind, the detention order was passed and that there was no basis or merit in the petition so as to warrant any interference with the detention order.

3. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner submitted that this petition may be decided on the ground that certain documents, which were vital to the right of representation, have not been supplied despite the demand made in the representation dated 21-4-96, which was sent by the petitioner's father to the Chief Minister and as such the petitioner's right of representation under Article 22(5) of the Constitution of India has been infringed. Mr. Nigam Shukla appearing on behalf of the respondents has submitted on the basis of the record available with him that this representation dated 21-4-96 was received in the office of the Chief Minister on 24-4-96 and on 26-4-96 while conveying the rejection of this representation to the petitioner the Home Department had also requested the District Magistrate, Amreli i.e. detaining authority that necessary action be taken with regard to the supply of the documents asked for by the petitioner and accordingly the District Magistrate, Amreli had sent a letter dated 6-5-96 to the petitioner informing him that while passing the detention order, the panchanamas and report of identification parade had not been taken into consideration and, therefore, there is no question of supplying the copies of the same and further that the

reports of the F.S.L. pertaining to 3 criminal cases and the copies of the same had already been made available. Except these three reports of the F.S.L. no other F.S.L. report was taken into consideration and, therefore, there is no question of supplying the same. With regard to the report of the identification parade it was mentioned by the District Magistrate, Amreli in his letter dated 6-5-96 that at the time of police raid the petitioner had run away and, therefore, the question of identification parade reports having taken into consideration while passing the detention order does not arise and, there was no question of supplying the same.

4. Such being the factual matrix with regard to the non supply of certain documents asked for by the petitioner, the learned counsel Mr. Prajapati appearing for the petitioner submitted that the copies of the panchanamas were vital documents for the purpose of making effective representation at least with regard to the cases, which were pending investigation with the police at the time of passing of the detention order. He has submitted that the criminal cases at Item Nos.7 and 8 mentioned in the grounds of detention were under police investigation and, therefore, the petitioner was entitled to the copies of the Panchanamas with regard to these two cases, which were not available with him. In support of his submission the learned counsel for the petitioner relied upon an unreported decision of this court rendered by the Division Bench in Special Criminal Application No.1164/93 decided on 20-1-94 and in the case of Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City, reported in 1994 (2) G.L.H. (U.J) 5 decided on 22-6-94 by this Court in which the detention orders were quashed on the ground that the copies of the panchanamas with regard to the case pending police investigation had not been supplied and that the non supply of the copies of the panchanama and Chemical Analysis Report despite subsequent demand did cause prejudice to the petitioner's right of representation.

5. I have heard learned counsel for both the sides and have also perused the copy of the representation dated 21-4-96 made by the petitioner's father to the Chief Minister. In this representation I find that a specific demand was made with regard to the supply of the copies of the panchanamas and certain other documents and it is the admitted position in the facts of this case that the copies of the panchanama with regard to the cases, which were pending police investigation, had not been supplied to the petitioner. The contention raised on behalf of the petitioner is, therefore, fully covered

in his favour by the aforesaid two decisions rendered by the Division Bench and the impugned order dated 15-4-96 passed by the District Magistrate, Amreli deserves to be quashed and set aside on this ground alone and the detention can not be allowed to be continued as the failure of the supply of these documents have resulted into violation of the petitioner's right under Article 22(5) of the Constitution of India.

6. Accordingly this Special Civil Application is allowed. The petitioner's continued detention is declared to be illegal. The impugned detention order dated 15-4-96 passed by District Magistrate, Amreli is hereby quashed and set aside. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.